

DOCKET NUMBER

BYPRODUCTS 40-8681-MLA-4 + MLA-5



INTERNATIONAL
URANIUM (USA)
CORPORATION

DOCKETED
USNRC

'99 JUN 11 110:34

Independence Plaza, Suite 950 • 1050 Seventeenth Street • Denver, CO 80265 • 303 628 7798 (main) • 303 389 4125 (fax)

OFFICE OF THE
RULES AND
ADJUDICATION STAFF

May 25, 1999

VIA FEDERAL EXPRESS

SERVED JUN 11 1999

Dr. Shirley A. Jackson
Chairman
U.S. Nuclear Regulatory Commission
Two White Flint North
Rockville, MD 20852-2738

Dear Chairman Jackson:

I wrote to you on May 13, 1999, concerning the State of Utah's efforts to regulate uranium recovery operations in violation of their Agreement with the NRC under Section 274 of the Atomic Energy Act. I just received a copy of a letter that Governor Michael Leavitt wrote to you on behalf of the State of Utah, dated May 21, 1999, in response to my May 13 letter. I attach a copy of Governor Leavitt's letter for your reference.

Governor Leavitt suggests, among other things, that my letter represents an *ex parte* communication regarding Utah's appeal of the Presiding Officer's decision In the Matter of International Uranium (USA) Corporation, LBP-99-5 (February 9, 1999) ("Ashland 2"). We respectfully disagree with the Governor. Our intent was to notify the Commission of the State's promulgation of proposed Rules R313-12-3 and R313-25-36, which were, and still are, out for public comment.

Under 10CFR2.78, interested persons may not make *ex parte* communications *relevant to the merits of a proceeding*. The Ashland 2 appeal goes to the interpretation and application by the NRC of its guidance in the determination of materials qualifying as alternate feeds in uranium mills. Unlike Governor Leavitt's letter, which does appear to address some of these issues, my letter addresses separate actions by the State of Utah which represent an attempt to decide what materials qualify as alternate feeds *irrespective* of NRC determination, including the pending Commission decision on Ashland 2. The most pressing of these actions is the promulgation of proposed Rules R313-12-3 and R313-25-36. My letter addressed the jurisdiction (or lack thereof) of the State of Utah to adopt these rules under their Agreement with the NRC and was not intended to address the matter under appeal. Furthermore, my comments on the proposed rules apply regardless of the outcome of the Commission's decision on the Ashland 2 appeal.

Aside from the issue of relevancy, 10CFR2.4 defines an *ex parte* communication as one made "not on the public record with respect to which reasonable prior notice to all parties

SECY-043

~~SECRET~~
DS02 20512

Dr. Shirley A. Jackson

May 25, 1999


Page 2

is not given." The extensive list of persons to whom my May 13 letter was copied, together with the fact that it addresses a publicly proposed State initiative, demonstrates that we did not violate the ex parte rule.

Notwithstanding the foregoing, I sincerely regret any confusion or misunderstanding that this letter may have created. Nevertheless, the issues raised in my letter are serious and must be addressed during the public comment period for the proposed rules. The integrity and viability of the Agreement State program demand no less.

Thank you for your further consideration of these issues.

Sincerely,



Earl E. Hoellen
President and Chief Executive Officer

Enclosure

cc: Commissioner Greta Joy Dicus
Commissioner Nils J. Diaz
Commissioner Edward McGaffigan, Jr.
Commissioner Jeffrey S. Merrifield
William D. Travers, NRC
Frank J. Miraglia, Jr., NRC
Carl J. Paperiello, NRC
John T. Greeves, NRC
Joseph J. Holonich, NRC
N. King Stablein, NRC
Paul Lohaus, NRC
Governor Michael O. Leavitt
Dianne R. Nielson, Utah DEQ
William J. Sinclair, Utah DEQ
Fred G. Nelson, Utah Attorney General's Office
Utah Radiation Control Board
Senator Orrin G. Hatch
Senator Robert F. Bennett
Representative Christopher B. Cannon
Representative Merrill A. Cook
Representative James V. Hansen
Thomas E. Bingham, Utah Mining Association

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

INTERNATIONAL URANIUM (USA)
CORPORATION (IUSA)
(Receipt of Material from
Tonawanda, New York)

Docket No.(s) 40-8681-MLA-4

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LTR IUSA TO CHAIRMAN DTD 5/25 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Peter B. Bloch
Presiding Officer
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Richard F. Cole
Special Assistant
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

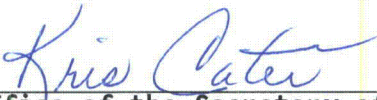
Lisa B. Clark, Esq.
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555

David J. Jordan, Esq.
Jill M. Pohlman, Esq.
Stoel Rives LLP
One Utah Center, 11th Floor
201 South Main Street
Salt Lake City, UT 84111

Denise Chancellor, Esq.
Fred G Nelson, Esq.
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114

Anthony J. Thompson, Esq.
Frederick S. Phillips, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, NW
Washington, DC 20037

Dated at Rockville, Md. this
11 day of June 1999


Office of the Secretary of the Commission

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

INTERNATIONAL URANIUM (USA)
CORPORATION (IUSA)
(Request for Material License
Amendment)

Docket No.(s) 40-8681-MLA-5

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LTR IUSA TO CHAIRMAN DTD 5/25 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Peter B. Bloch
Presiding Officer
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Richard F. Cole
Special Assistant
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Lisa B. Clark, Esq.
Office of the General Counsel
Mail Stop - 0-15 B18
U.S. Nuclear Regulatory Commission
Washington, DC 20555

David J. Jordan, Esq.
Jill M. Pohlman, Esq.
Stoel Rives LLP
One Utah Center, 11th Floor
201 South Main Street
Salt Lake City, UT 84111

Fred G. Nelson, Esq.
Denise Chancellor, Esq.
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114

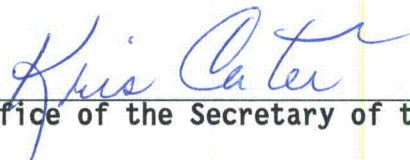
Clarence Rockwell
Executive Director
Navajo Utah Commission
P.O. Box 570
Montezuma Creek, UT 84534

Gene Stevenson
Concerned Citizens of San Juan County
P.O. Box 261
Bluff, UT 84512

Docket No.(s)40-8681-MLA-5
LTR IUSA TO CHAIRMAN DTD 5/25

Anthony J. Thompson, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, NW
Washington, DC 20037

Dated at Rockville, Md. this
11 day of June 1999


Office of the Secretary of the Commission